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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/916,611	07/27/2001	Greg Volgas	HCC-011 (306*142)	8709
23416 7590 02/13/2008 CONNOLLY BOVE LODGE & HUTZ, LLP P O BOX 2207 WILMINGTON, DE 19899			EXAMINER PRYOR, ALTON NATHANIEL	
			ART UNIT 1616	PAPER NUMBER
			MAIL DATE 02/13/2008	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

09/916,611

Applicant(s)

VOLGAS ET AL.

Examiner

Alton N. Pryor

Art Unit

1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 November 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,3-18,20-28,30-39,41-48,50-65, 82-85,87,89 and 91 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3-18,20-28,30-39,41-48,50-65, 82-85,87,89,91 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

I. Applicant's arguments, see paper, filed 11/8/07, with respect to claim 91 being rejected under 35 USC 112, 2<sup>nd</sup> paragraph have been fully considered and are persuasive. The rejection under 35 USC 112, 2<sup>nd</sup> paragraph has been withdrawn.

#### ***35 USC 112, 2<sup>nd</sup>***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 91 is no longer rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 71 from which 91 depends has been cancelled. Please correct.

#### ***Applicants' response***

The Applicants have amended claim 91 to depend from claim 7. This amendment removes the 112, 2nd paragraph rejection.

II. Applicant's arguments filed 11/8/07 have been fully considered but they are not persuasive. See argument below.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1,3-18,20-28,30-39,41-48,50-65,82-85,87, and 89 remain rejected as being obvious over USPN 5558806 and USPN 5078782. Claim 91 is added to this rejection. USPN '806 teaches a composition comprising acid pesticides such as 2,4-D, dicamba, triclopyr, picloram or copyralid and a surfactant blend comprising a polyalkyleneoxide polysiloxane and an organic compound such as block copolymers of ethylene oxide and propylene oxide, polyethylene oxide, mono-polyglucoside, alcohol alkoxyate, phosphate ester, ethoxy sulfate, etc. and optionally a crop oil concentrate, i.e., mineral oil or methylated soybean oil. See abstract, column 2 lines 21 – column 4 line 27, column 6 lines 26-42, column 9 line 52 – column 10 line 2, Example 4. USPN '806 discloses that the concentration of the pesticide active ingredient ranges from about 2 to about 75% by weight of the composition and preferably ranges in an amount of from about 4 to about 40%. USPN '806 teaches that the weight ratio of pesticide to surfactant blend ranges from about 1:99 to about 99:1 and ranges preferably from about 40:60 to about 60:40. See column 9 lines 19-23,32-36. USPN '806 does not teach the instant invention comprising the ester of 2,4-D and an aromatic solvent. However, USPN '782 teaches pesticidal concentrates comprising 1-55% by weight of pesticides such as the ester of 2,4-D,

dichlorprop or MCPA, 20-90% by weight of the oily surfactants such as mineral oil, spindle oil and vegetable oils (soy oil, rape seed oil, olive oil) and 1-45% by weight of a surfactant such as block polymers of ethylene and propylene oxide, polyalcohol, ethoxylated, propoxylated and co-ethoxylated/propoxylated polyalcohols, etc. plus aromatic solvents. See column 12 lines 14-22, column 10 lines 7-30, and column 8 lines 3-37. It would have been obvious to one having ordinary skill in the art to combine the compositions taught in USPN '806 and '782 to arrive at an invention comprising 2,4-D, ester of 2,4-D, a mineral oil or methylated soybean oil, a polyalkyleneoxide polysiloxane and an aromatic solvent. It would have been obvious to for one try this combination since both individual patents teach the same utility.

*Response to Applicants' arguments*

Applicants argue that key features "1. A chlorinated carboxylic acid herbicide in acid form. 2. A surfactant such that the chlorinated carboxylic acid herbicide is **fully dissolved in the surfactant**" are not present in Policello and that neither Policello nor Nielson would lead one to even investigate the use of the acid form of the phenoxy herbicides. The examiner argues that Policello teaches the composition comprising acid herbicides such as 2,4-D which is a chlorinated carboxylic acid herbicide and the presence of a siloxane type surfactant in the composition. Policello also teaches that the ratio of surfactant to pesticide can be equal. This is reflected in the ratio of pesticide to surfactant disclosed in Policello ranging from 40:60 to 60:40. Since Policello discloses the same combination of pesticide and surfactant and further suggests that the components can be present in equal amounts as recited in

instant claims, it would have been expected that the pesticide in Policello to be fully soluble in the surfactant. Applicants argue that the reference does not exemplify the acid form chlorinated carboxylic acids and that the reference on exemplifies the salts of chlorinated carboxylic acid herbicides (e.g. Reflex). The Examiner argues that Policello reference specifically discloses that the herbicide or pesticide can be used in acid form. Therefore, whether or not the reference exemplifies an acid form is insignificant. Note a reference does not have to exemplify all possible scenarios to make an invention obvious. There is argument being made by the Applicants with respect to Nielson not disclosing acid forms of chlorinated carboxylic acids. The Examiner would like to point out that Nielson is solely being used to demonstrate that herbicide compositions comprising 2,4-D ester (chlorinated acid ester herbicide) and aromatic solvents exist. It would have been obvious to meet the entire scope of the claims by combining Neilson with Policello. One would have been motivated to do this since both individual references have the same utility (i.e. herbicides). For the above reasons the rejection on record is maintained.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

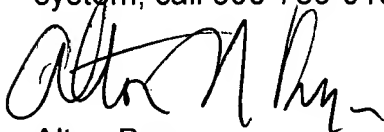
extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

***Telephonic Inquiry***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alton N. Pryor whose telephone number is 571-272-0621. The examiner can normally be reached on 8:00 a.m. - 4:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter can be reached on 571-272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Alton Pryor  
Primary Examiner  
AU 1616